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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 RICHARD WILLIAMS,) Case No.: 1:21-cv-00090-DAD-SAB (PC)
12 Plaintiff,)
13 v.) FINDINGS AND RECOMMENDATIONS
14 CLARK J. KELSO, et al.,) RECOMMENDING DISMISSAL OF ACTION,
15 Defendants.) WITHOUT PREJUDICE, FOR FAILURE TO
16) EXHAUST THE ADMINISTRATIVE REMEDIES
AND FAILURE TO STATE A COGNIZABLE
CLAIM FOR RELIEF
(ECF No. 9)

17 Plaintiff Richard Williams is proceeding *pro se* in this civil rights action pursuant to 42 U.S.C.
18 § 1983.

19 Currently before the Court is Plaintiff's first amended complaint, filed on March 22, 2021.

20 **I.**

21 **SCREENING REQUIREMENT**

22 The Court is required to screen complaints brought by prisoners seeking relief against a
23 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court
24 must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous
25 or malicious," that "fail[] to state a claim on which relief may be granted," or that "seek[] monetary
26 relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); see also 28
27 U.S.C. § 1915A(b).

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1 A complaint must contain “a short and plain statement of the claim showing that the pleader is
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do
4 not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550
5 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated
6 in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

7 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings liberally
8 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th
9 Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible, which
10 requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is
11 liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
12 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and
13 “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying the plausibility
14 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

15 II.

16 COMPLAINT ALLEGATIONS

17 The Court accepts Plaintiff’s allegations in the complaint as true only for the purpose of the *sua*
18 *sponte* screening requirement under 28 U.S.C. § 1915.

19 Plaintiff names Michael Freeman, David Rohrdanz, Jeffrey Sugarman, Roscoe Borrow, and
20 Clark Kelso, as Defendants.

21 Dr. Rohrdanz denied Plaintiff pain medication several times and failed to refer him to a
22 specialist. Dr. Sugarman denied surgery and pain management.

23 III.

24 DISCUSSION

25 A. Exhaustion of Administrative Remedies

26 The Prison Litigation Reform Act (PLRA) of 1995, requires that prisoners exhaust “such
27 administrative remedies as are available” before commencing a suit challenging prison conditions.” 42
28 U.S.C. § 1997e(a); see Ross v. Blake, — U.S. — 136 S.Ct. 1850 (June 6, 2016) (“An inmate need

1 exhaust only such administrative remedies that are ‘available.’ ”). Exhaustion is mandatory unless
2 unavailable. “The obligation to exhaust ‘available’ remedies persists as long as some remedy remains
3 ‘available.’ Once that is no longer the case, then there are no ‘remedies ... available,’ and the prisoner
4 need not further pursue the grievance.” Brown v. Valoff, 422 F.3d 926, 935 (9th Cir. 2005) (emphasis
5 in original) (citing Booth v. Churner, 532 U.S. 731, 739 (2001)).

6 This statutory exhaustion requirement applies to all inmate suits about prison life, Porter v.
7 Nussle, 534 U.S. 516, 532 (2002) (quotation marks omitted), regardless of the relief sought by the
8 prisoner or the relief offered by the process, Booth v. Churner, 532 U.S. at 741, and unexhausted
9 claims may not be brought to court, Jones v. Bock, 549 U.S. 199, 211 (2007) (citing Porter, 534 U.S.
10 at 524).

11 The failure to exhaust is an affirmative defense, and the defendants bear the burden of raising
12 and proving the absence of exhaustion. Jones, 549 U.S. at 216; Albino v. Baca, 747 F.3d 1162, 1166
13 (9th Cir. 2014). “In the rare event that a failure to exhaust is clear from the face of the complaint, a
14 defendant may move for dismissal under Rule 12(b)(6).” Albino, 747 F.3d at 1166. Otherwise, the
15 defendants must produce evidence proving the failure to exhaust, and they are entitled to summary
16 judgment under Rule 56 only if the undisputed evidence, viewed in the light most favorable to the
17 plaintiff, shows he failed to exhaust. Id.

18 On the first amended complaint form, Plaintiff checks the box “yes” in response to the
19 questions as to whether an administrative appeal process is available at his institution and whether he
20 filed an appeal or grievance as to all the facts alleged in the complaint. (First Am. Compl. at 2.)
21 However, in response to the question whether the administrative process is complete, Plaintiff writes
22 “I was seen by Dr. Rohrdanz and denied pain medications and [surgical excision]. Due to this [I] felt
23 my remedies were exhaust[ed] cause of denial of D.R.” (First Am. Compl. at 2.) The mere fact that a
24 doctor denied pain medication does not render the administrative process complete. Thus, it is clear
25 from the face of Plaintiff’s complaint that he has not exhausted administrative remedies pursuant to
26 the Prison Litigation Reform Act, 41 U.S.C. § 1997 (e)(a), before filing this lawsuit. Therefore,
27 dismissal of the action, without prejudice, is warranted. In addition, for the reasons explained below,
28 Plaintiff’s first amended complaint fails to state a cognizable claim for relief.

1 **B. Federal Receiver as Defendant**

2 Plaintiff erroneously names the California Receivership Corporation as a Defendant. To the
3 extent Plaintiff is seeking to sue the Receiver appointed in *Plata v. Schwarzenegger*, J. Clark Kelso,
4 Federal Receiver, is not a proper defendant. Mr. Kelso, in his role as a federal receiver, is entitled to
5 quasi-judicial immunity. See Plata v. Schwarzenegger, No. C01-1351-THE, at *6 (N.D. Cal. Feb. 14,
6 2006) (in class action constitutional challenge to the adequacy of medical care provided in California
7 prisons, (“[t]he Receiver ... shall be vested with the same immunities as vest with this Court.”)); see
8 also Coleman v. Schwarzenegger, 2007 WL 4276554 (E.D. Cal. Nov. 29, 2007) (holding that a
9 receiver who was “imbued with the power and authority to act in the name of the Court as the Court's
10 officer” had judicial immunity).

11 Furthermore, liability may not be imposed on supervisory personnel for the actions or
12 omissions of their subordinates under the theory of respondeat superior. Iqbal, 556 U.S. at 676–77;
13 Simmons v. Navajo Cty., Ariz., 609 F.3d 1011, 1020–21 (9th Cir. 2010); Ewing v. City of Stockton,
14 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).
15 Supervisors may be held liable only if they “participated in or directed the violations, or knew of the
16 violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989);
17 accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570
18 (9th Cir. 2009). Supervisory liability may also exist without any personal participation if the official
19 implemented “a policy so deficient that the policy itself is a repudiation of the constitutional rights and
20 is the moving force of the constitutional violation.” Redman v. Cty. of San Diego, 942 F.2d 1435,
21 1446 (9th Cir. 1991) (citations and quotations marks omitted), abrogated on other grounds by Farmer
22 v. Brennan, 511 U.S. 825 (1994).

23 To prove liability for an action or policy, the plaintiff “must ... demonstrate that his deprivation
24 resulted from an official policy or custom established by a ... policymaker possessed with final
25 authority to establish that policy.” Waggy v. Spokane County Washington, 594 F.3d 707, 713 (9th
26 Cir.2010). When a defendant holds a supervisory position, the causal link between such defendant and
27 the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858,
28 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory

1 allegations concerning the involvement of supervisory personnel in civil rights violations are not
2 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

3 The Eleventh Amendment also bars actions seeking damages from state officials acting in their
4 official capacities. See Eaglesmith v. Ward, 73 F.3d 857, 859 (9th Cir. 1995); Pena v. Gardner, 976
5 F.2d 469, 472 (9th Cir. 1992) (per curiam). Thus, Plaintiff cannot seek damages against any Defendant
6 in his/her official capacity as such claims are barred by the Eleventh Amendment. See Mitchell v.
7 Washington, 818 F.3d 436, 441 (9th Cir. 2016); Eaglesmith, 73 F.3d at 859.

8 **C. Deliberate Indifference to Serious Medical Need**

9 A prisoner's claim of inadequate medical care does not constitute cruel and unusual punishment
10 in violation of the Eighth Amendment unless the mistreatment rises to the level of "deliberate
11 indifference to serious medical needs." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting
12 Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two-part test for deliberate indifference requires
13 Plaintiff to show (1) "a 'serious medical need' by demonstrating that failure to treat a prisoner's
14 condition could result in further significant injury or the 'unnecessary and wanton infliction of pain,'" and
15 (2) "the defendant's response to the need was deliberately indifferent." Jett, 439 F.3d at 1096. A
16 defendant does not act in a deliberately indifferent manner unless the defendant "knows of and
17 disregards an excessive risk to inmate health or safety." Farmer v. Brennan, 511 U.S. 825, 837 (1994).
18 "Deliberate indifference is a high legal standard," Simmons, 609 F.3d at 1019; Toguchi v. Chung, 391
19 F.3d 1051, 1060 (9th Cir. 2004), and is shown where there was "a purposeful act or failure to respond
20 to a prisoner's pain or possible medical need" and the indifference caused harm. Jett, 439 F.3d at 1096.

21 Negligence or medical malpractice do not rise to the level of deliberate indifference. Broughton
22 v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-106). "[A]
23 complaint that a physician has been negligent in diagnosing or treating a medical condition does not
24 state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does
25 not become a constitutional violation merely because the victim is a prisoner." Estelle, 429 U.S. at 106;
26 see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995). Even gross negligence is
27 insufficient to establish deliberate indifference to serious medical needs. See Wood v. Housewright,
28 900 F.2d 1332, 1334 (9th Cir. 1990). Additionally, a prisoner's mere disagreement with diagnosis or

1 treatment does not support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th
2 Cir. 1989).

3 Further, a “difference of opinion between a physician and the prisoner—or between medical
4 professionals—concerning what medical care is appropriate does not amount to deliberate
5 indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v. Vild, 891 F.2d
6 at 242, overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082–83 (9th Cir. 2014);
7 Wilhelm v. Rotman, 680 F.3d 1113, 1122–23 (9th Cir. 2012) (citing Jackson v. McIntosh, 90 F.3d
8 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must show that the course of treatment the doctors chose
9 was medically unacceptable under the circumstances and that the defendants chose this course in
10 conscious disregard of an excessive risk to [his] health.” Snow, 681 F.3d at 988 (citing Jackson, 90
11 F.3d at 332) (internal quotation marks omitted).

12 Here, Plaintiff merely alleges that he was denied pain medication and surgery. However,
13 Plaintiff fails to set for any factual allegation to demonstrate that any Defendant acted with deliberate
14 indifference to a serious medical need. Plaintiff’s simple disagreement with medical professionals
15 opinions and treatment does not support a claim for deliberate indifference. Further, Plaintiff cannot
16 seek relief by way of section 1983 for medical malpractice. Accordingly, Plaintiff fails to state a
17 cognizable claim for relief. Although the Court would typically grant Plaintiff one additional
18 opportunity to amend the complaint due to his pro se status, amendment is futile in this instance
19 because it is clear that the failure to exhaust cannot be cured by the allegation of additional facts. See
20 Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000); see also Schmier v. U.S. Court of Appeals for
21 the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002) (recognizing “[f]utility of amendment” as a
22 proper basis for dismissal without leave to amend).

23 IV.

24 RECOMMENDATIONS

25 Based on the foregoing, it is HEREBY RECOMMENDED that the instant action be dismissed,
26 without prejudice, for failure to exhaust the administrative remedies and failure to state a cognizable
27 claim for relief.

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1 These Findings and Recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
3 after being served with these Findings and Recommendations, Plaintiff may file written objections
4 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
5 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
6 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
7 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
8

9 IT IS SO ORDERED.

10 Dated: May 17, 2021


UNITED STATES MAGISTRATE JUDGE